

REMARKS

Claims 1-25 are currently pending and stand rejected. In the Advisory Action dated October 4, 2007, the Examiner maintains the rejections made in the final Office Action dated August 6, 2007.

Claim Amendments

Applicants amend independent claim 1 to include the limitations of dependent claim 17, which is hereby cancelled. Dependent claims 18-20 are amended to now depend from claim 1.

Applicants also add new independent claims 31 and 32. Claim 31 recites a tissue harvesting device with a handle housing having a trigger coupled thereto, an outer tube extending from the handle housing and rotatable relative to the handle housing. A shaft is rotatably disposed within the outer tube and movable between a first, proximal position in which the shaft is fully disposed within the outer tube, and a second, distal position in which a portion of a distal end of the shaft extends through a substantially open distal end of the outer tube and a tissue harvesting tip is formed on the distal end of the shaft effective to excise a tissue sample. A cutting member is coupled to the shaft at a position proximal to the tissue harvesting tip effective to macerate a tissue sample excised by the tissue harvesting tip. Support for this amendment can be found throughout the specification, at least in paragraph [0034] of the published application, as well as in Figure 1B. Claim 32 recites a tissue harvesting device with a substantially hollow cylindrical member having a substantially flattened distal end and a plurality of cutting teeth formed around an outer sidewall thereof and having openings formed therein and extending into an inner lumen of the cylindrical member. The plurality of cutting teeth protrude from the outer sidewall such that the plurality of cutting teeth are effective to excise a plurality of tissue samples upon axial rotation of the cylindrical member and to deliver the plurality of tissue samples to the inner lumen. Support for this amendment can be found throughout the specification, at least in paragraph [0039] of the published application, as well as in Figure 3D. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 103

Stockmeier and Altman

Claims 1-3, 5-7, 10-16, and 21-25 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,195,956 of Stockmeier ("Stockmeier") in view of PCT Publication No. WO 99/58066 of Altman et al. ("Altman").

As noted above, claim 1 is amended to include the limitations of claim 17, thereby obviating the basis for this rejection. Dependent claims 2, 3, 5-7, 10-16, and 21-25 depend from claim 1 and therefore also distinguish over Stockmeier in view of Altman.

Stockmeier, Altman, and Majlessi

Dependent claims 17-20 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Stockmeier in view of Altman and in further view of U.S. Patent No. 5,871,454 of Majlessi. The Examiner admits that Stockmeier and Altman do not disclose the claimed sizing screen. The Examiner thus relies on Majlessi to remedy the deficiencies of Stockmeier and Altman, arguing that it would have been obvious to one of ordinary skill to modify the tissue harvesting device as taught by Stockmeier in view of Altman with the screen as taught by Majlessi for the purpose of increasing the efficacy of a tissue extraction and maceration device for increased patient safety and user operability during surgical procedures. As noted above, claim 1 has been amended to include the limitations of claim 17.

None of the references, including Majlessi, teach or suggest a sizing screen disposed within an outer tube and positioned proximal to the harvesting tip. Majlessi teaches a "blocking means," or sizing screen, contained within a collection chamber disposed on a proximal most end of a biopsy device. The blocking means is not *disposed within an outer tube*, as required by claim 1, but instead is contained within the collection chamber which is fitted *over and around* the proximal most end of an outer sleeve. To establish *prima facie* obviousness, "all claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Majlessi fails to teach a sizing screen disposed within an outer tube and thus

fails to meet the limitations of claim 1. Independent claim 1, as well as claims 18-20 which depend therefrom, therefore distinguish over Stockmeier, Altman, and Majlessi and represent allowable subject matter.

Stockmeier, Altman, and Shapira


Dependent claims 4 and 8-9 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Stockmeier in view of Altman and in further view of U.S. Patent No. 6,358,252 of Shapira. At least for the reasons explained above, independent claim 1 distinguishes over Stockmeier in view of Altman. Shapira is simply relied on to teach a specific harvesting tip and cannot remedy the deficiencies of Stockmeier and Altman. Accordingly, claims 4 and 8-9 are allowable at least because they depend from an allowable base claim.

Conclusion

Applicants submit that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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